

AMENDED IN ASSEMBLY APRIL 26, 2006

AMENDED IN ASSEMBLY APRIL 6, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## ASSEMBLY BILL

**No. 3013**

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**Introduced by Assembly Member Koretz**

February 24, 2006

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An act to ~~amend Section 56.16 of~~ *add Sections 56.1005 and 56.1007 to, and to repeal Section 56.16 of*, the Civil Code, relating to medical information.

### LEGISLATIVE COUNSEL'S DIGEST

AB 3013, as amended, Koretz. Medical information: disclosures.

The *state Confidentiality of Medical Information Act* ~~allows a provider of health care, upon an inquiry concerning a specific patient, to release at its discretion a patient's name, address, age, and sex; a general description of the reason for treatment; the general nature of the injury, burn, poisoning, or other condition; the general condition of the patient; and any information that is not medical information, as defined, unless there is a specific written request by the patient to prohibit that release. Notwithstanding that provision, the act prohibits a provider of health care, a health care service plan, contractor, or corporation and its subsidiaries and affiliates from intentionally sharing, selling, or otherwise using any medical information, as defined, for any purpose not necessary to provide health care services to a patient, except as expressly authorized by the patient, enrollee, or subscriber, as specified, or as otherwise required or authorized by law.~~

Violations of these provisions are subject to a civil action for compensatory and punitive damages, and, if a violation results in

economic loss or personal injury to a patient, it is punishable as a misdemeanor.

*The federal Health Insurance Portability and Accountability Act (HIPAA) prohibits a covered entity that uses electronic means to perform HIPAA-covered transactions, from using or disclosing personal health information except pursuant to a written authorization signed by the patient or for treatment, payment, or health care operations. Notwithstanding those provisions, HIPAA allows a covered entity to maintain a directory of patients in its facility for specified purposes, and disclose the protected health information of a patient to family members, relatives, or other persons identified by the patient, if certain conditions are met. HIPAA further provides that if its provisions conflict with a provision of state law, the provision that is most protective of patient privacy prevails.*

*The state Confidentiality of Medical Information Act allows a provider of health care, upon an inquiry concerning a specific patient, to release at its discretion a patient's name, address, age, and sex; a general description of the reason for treatment; the general nature of the injury, burn, poisoning, or other condition; the general condition of the patient; and any information that is not medical information, as defined, unless there is a specific written request by the patient to prohibit that release.*

~~This bill would prohibit a provider of health care from making discretionary releases that are unrelated to a physical injury suffered by a patient, and would limit certain disclosures about a patient's condition to his or her physical condition~~ *delete that latter provision and instead would add to the state Confidentiality of Medical Information Act, the HIPAA provisions related to patient directories and medical information disclosures to family members, relatives, or other persons identified by a patient, thereby requiring a provider of health care, health care service plan, or contractor to comply with those provisions.*

By expanding the definition of a crime under the Confidentiality of Medical Information Act, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 56.1005 is added to the Civil Code, to*  
2     *read:*  
3     *56.1005. (a) Except when an objection is expressed in*  
4     *accordance with subdivision (b) or (c), a provider of health care,*  
5     *health care service plan, or contractor may do any of the*  
6     *following:*  
7         *(1) Use the following medical information to maintain a*  
8         *directory of patients in its facility:*  
9             *(A) The patient's name.*  
10            *(B) The patient's location in the facility.*  
11            *(C) The patient's condition described in general terms that*  
12            *does not communicate specific medical information about the*  
13            *patient.*  
14            *(D) The patient's religious affiliation.*  
15         *(2) Disclose for directory purposes that information to either*  
16         *of the following:*  
17             *(A) A member of the clergy.*  
18             *(B) Except for religious affiliation, any other person who asks*  
19             *for the patient by name.*  
20         *(b) A provider of health care, health care service plan, or*  
21         *contractor shall inform a patient of the medical information that*  
22         *it may include in a directory and the persons to whom it may*  
23         *disclose that information, including disclosures to clergy of*  
24         *information regarding religious affiliation, and provide the*  
25         *patient with the opportunity to restrict or prohibit some or all of*  
26         *the uses or disclosures permitted by subdivision (a).*  
27         *(c) If the opportunity to object to uses or disclosures required*  
28         *by subdivision (b) cannot practicably be provided because of the*  
29         *patient's incapacity or an emergency treatment circumstance, a*  
30         *provider of health care, health care service plan, or contractor*  
31         *may use or disclose some or all of the medical information*  
32         *permitted by subdivision (a) for the facility's directory, if that*  
33         *disclosure is all of the following:*

1     (1) *Consistent with a prior expressed preference of the patient,*  
2     *if any, that is known to the provider of health care, health care*  
3     *service plan, or contractor.*

4     (2) *In the patient's best interest as determined by the provider*  
5     *of health care, health care service plan, or contractor, in the*  
6     *exercise of professional judgment.*

7     (d) *The provider of health care, health care service plan, or*  
8     *contractor shall inform the patient and provide an opportunity to*  
9     *object to uses or disclosures for directory purposes as required*  
10    *by subdivision (b) when it becomes practicable to do so.*

11    SEC. 2. *Section 56.1007 is added to the Civil Code, to read:*

12    56.1007. (a) *A provider of health care, health care service*  
13    *plan, or contractor may, in accordance with subdivision (c) or*  
14    *(d), disclose to a family member, other relative, domestic*  
15    *partner, or a close personal friend of the patient, or any other*  
16    *person identified by the patient, the medical information directly*  
17    *relevant to that person's involvement with the patient's care or*  
18    *payment related to the patient's health care.*

19    (b) *A provider of health care, health care service plan, or*  
20    *contractor may use or disclose medical information to notify, or*  
21    *assist in the notification of, including identifying or locating, a*  
22    *family member, a personal representative of the patient, a*  
23    *domestic partner, or another person responsible for the care of*  
24    *the patient of the patient's location, general condition, or death.*  
25    *Any use or disclosure of medical information for those*  
26    *notification purposes shall be in accordance with the provisions*  
27    *of subdivision (c), (d), or (e), as applicable.*

28    (c) *If the patient is present for, or otherwise available prior to,*  
29    *a use or disclosure permitted by subdivision (a) or (b) and has*  
30    *the capacity to make health care decisions, the provider of health*  
31    *care, health care service plan, or contractor may use or disclose*  
32    *the medical information if it does any of the following:*

33    (1) *Obtains the patient's agreement.*

34    (2) *Provides the patient with the opportunity to object to the*  
35    *disclosure, and the patient does not express an objection.*

36    (3) *Reasonably infers from the circumstances, based on the*  
37    *exercise of professional judgment, that the patient does not*  
38    *object to the disclosure.*

39    (d) *If the patient is not present, or the opportunity to agree or*  
40    *object to the use or disclosure cannot practicably be provided*

1 *because of the patient's incapacity or an emergency*  
2 *circumstance, the provider of health care, health care service*  
3 *plan, or contractor may, in the exercise of professional judgment,*  
4 *determine whether the disclosure is in the best interests of the*  
5 *patient and, if so, disclose only the medical information that is*  
6 *directly relevant to the person's involvement with the patient's*  
7 *health care. A provider of health care, health care service plan,*  
8 *or contractor may use professional judgment and its experience*  
9 *with common practice to make reasonable inferences of the*  
10 *patient's best interest in allowing a person to act on behalf of the*  
11 *patient to pick up filled prescriptions, medical supplies, X-rays,*  
12 *or other similar forms of medical information.*

13 *(e) A provider of health care, health care service plan, or*  
14 *contractor may use or disclose medical information to a public*  
15 *or private entity authorized by law or by its charter to assist in*  
16 *disaster relief efforts, for the purpose of coordinating with those*  
17 *entities the uses or disclosures permitted by subdivision (b). The*  
18 *requirements in subdivisions (c) and (d) apply to those uses and*  
19 *disclosures to the extent that the provider of health care, health*  
20 *care service plan, or contractor, in the exercise of professional*  
21 *judgment, determines that the requirements do not interfere with*  
22 *the ability to respond to the emergency circumstances.*

23 *SEC. 3. Section 56.16 of the Civil Code is repealed.*

24 ~~56.16.—Unless there is a specific written request by the patient~~  
25 ~~to the contrary, nothing in this part shall be construed to prevent~~  
26 ~~a provider, upon an inquiry concerning a specific patient, from~~  
27 ~~releasing at its discretion any of the following information: the~~  
28 ~~patient's name, address, age, and sex; a general description of the~~  
29 ~~reason for treatment (whether an injury, a burn, poisoning, or~~  
30 ~~some unrelated condition); the general nature of the injury, burn,~~  
31 ~~poisoning, or other condition; the general condition of the~~  
32 ~~patient; and any information that is not medical information as~~  
33 ~~defined in subdivision (c) of Section 56.05.~~

34 ~~SECTION 1. Section 56.16 of the Civil Code is amended to~~  
35 ~~read:~~

36 ~~56.16.—Unless there is a specific written request by the patient~~  
37 ~~to the contrary, nothing in this part shall be construed to prevent~~  
38 ~~a provider, upon an inquiry concerning a specific patient, from~~  
39 ~~releasing at its discretion any of the following information, when~~  
40 ~~related solely to a physical injury suffered by that patient: the~~

1 patient's name, address, age, and sex; a general description of the  
2 reason for treatment (whether an injury, a burn, poisoning, or  
3 some unrelated physical condition); the general nature of the  
4 injury, burn, poisoning, or other physical condition; the general  
5 condition of the patient; and any information that is not medical  
6 information as defined in subdivision (e) of Section 56.05.

7 ~~SEC. 2.~~

8 *SEC. 4.* No reimbursement is required by this act pursuant to  
9 Section 6 of Article XIII B of the California Constitution because  
10 the only costs that may be incurred by a local agency or school  
11 district will be incurred because this act creates a new crime or  
12 infraction, eliminates a crime or infraction, or changes the  
13 penalty for a crime or infraction, within the meaning of Section  
14 17556 of the Government Code, or changes the definition of a  
15 crime within the meaning of Section 6 of Article XIII B of the  
16 California Constitution.